

**OFFICE OF THE WASHOE COUNTY
DISTRICT ATTORNEY**

May 4, 2018



REPORT ON THE JULY 28, 2016, OFFICER INVOLVED
SHOOTING OF JORGE MORENO-AGUIRRE

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TABLE OF CONTENTS

INTRODUCTION	1
I. STATEMENT OF FACTS AND PHOTOGRAPHS	3
A. WITNESS ACCOUNTS	15
1. CIVILIAN STEVEN GANT	15
2. OFFICER SHANE MINICK	16
3. OFFICER ERIC DEJESUS LEGAL	17
B. ANALYSIS OF PATROL VEHICLE VIDEO	18
C. BACKGROUND INVESTIGATION REGARDING MORENO-AGUIERRE	19
II LEGAL PRINCIPLES	21
A. THE USE OF DEADLY FORCE IN SELF-DEFENSE OF ANOTHER	21
B. JUSTIFIABLE HOMICIDE BY PUBLIC OFFICER	23
C. USE OF DEADLY FORCE TO EFFECT ARREST	23
III. ANALYSIS	23
IV. CONCLUSION	24

INTRODUCTION

On July 28, 2016, at approximately 10:15 a.m., Jorge Moreno-Aguirre (hereinafter "Moreno-Aguirre"), was sent home from his place of employment at a local restaurant after he was caught pouring himself an alcoholic drink while working. Within approximately an hour of that time, Moreno-Aguirre's blood alcohol content would be .196, more than twice the legal limit.

Moreno-Aguirre left the bar and at 10:41 a.m. a citizen called 911 to report a suspected drunk driver. The citizen described how a Jeep driven by Moreno-Aguirre had cut him off, stuck a parked car, fled at a high rate of speed, struck at least one other car and was last driving approximately 70 miles per hour in a residential neighborhood. Soon thereafter, another citizen reported seeing Moreno-Aguirre's Jeep strike a fence at a park, briefly stop in front of a home near 1267 Flora Glen Drive, and then speed off in a southwesterly direction.

Based on those reports, Sparks Police Department (hereinafter "SPD") Officers Shane Minick and Eric DeJesus went to look for the Jeep in their marked patrol vehicle. The officers located a fluid trail in the reported area and followed it until they found Moreno-Aguirre's Jeep parked in the roadway. Moreno-Aguirre was at the front of his vehicle as if inspecting it for damage. However, when he saw the officers' patrol car he entered the Jeep and fled through a residential area. Based on these actions and the witness accounts of Moreno-Aguirre's driving, the officers began a pursuit.

During the pursuit Moreno-Aguirre proved to be a continued threat to the safety of others as he failed to immediately stop for lights and siren, ran stop signs, sped, and swerved from his travel lane while in a residential area. He also further heightened Officer Minick's safety concerns when he was seen moving about the vehicle during the pursuit as if grabbing or hiding an item.

The Jeep then came to an abrupt stop in its travel lane. To the right of the Jeep were two churches and a recreation center full of children in a summer program. To the left and behind the Jeep was an open space, another church and a pedestrian.

From their patrol vehicle, the SPD officers could see Moreno-Aguirre moving between the front seats of the Jeep. They then

saw Moreno-Aguirre's right arm and hand raise. He was now holding a revolver and extending it back and to the right pointed in the direction of Officer DeJesus who was in the passenger seat of the patrol vehicle. The officers' perception of his actions is corroborated by the video from their patrol vehicle.

The officers immediately exited the vehicle shouting repeated orders for Moreno-Aguirre to stop and show his hands. Moreno-Aguirre's driver's side window was down giving rise to a reasonable inference that Moreno-Aguirre could hear the commands and was choosing not to obey them. However, instead of stopping and showing his hands, he repeatedly moved and reached between the front seats of the vehicle.

The patrol vehicle video corroborates the officers' accounts and shows Moreno-Aguirre dipping his head between the front seats twice and his hand moving between the seats at least twice. The final time raising with a clenched fist containing an object. Officer Minick, firmly convinced that Moreno-Aguirre still had the weapon and was about to shoot Officer Dejesus, fired his weapon. Hearing a shot ring out Officer Dejesus also fired believing that he was either being shot at or was about to be shot.

Moreno-Aguirre was hit by the officers' gunfire and ultimately succumbed to his injuries. A loaded Beretta semi-automatic handgun was found in Moreno-Aguirre's left front pocket of his pants. A fully loaded .357 caliber Ruger Blackhawk revolver, the one Moreno-Aguirre brandished towards the officers, was found in the rear cargo area of the Jeep.

Consistent with the regionally-adopted Officer Involved Shooting (OIS) Protocol, the Reno Police Department (hereinafter "RPD") led the investigation into the shooting of Moreno-Aguirre. The Washoe County Sheriff's Office (hereinafter "WCSO") provided secondary investigative support, SPD provided further needed support, and the Washoe County Crime Laboratory (hereinafter "WCCL") provided forensic services. The Washoe County District Attorney's Office provided legal assistance.

The investigation included interviewing witnesses, collecting physical evidence, photographing the shooting scene, forensically testing collected evidence, and interviewing the officers involved in the shooting.

Upon completion of the entire investigation, all police reports along with WCCCL forensic reports, collected documentation, photographs, video, witness statements, and recorded interviews were submitted to the Washoe County District Attorney's Office in July of 2017, for a final determination of whether the shooting of Moreno-Aguirre was legally justified. No criminal charges against the shooting officers were recommended by RPD.

The District Attorney's evaluation included reviewing hundreds of pages of reports and documents, which included interviews of police and civilian witnesses. It further included the review of photographs, diagrams, video recordings, and examination of the scene of the shooting. This report follows.

Based upon a review of all the events, including Moreno-Aguirre's driving pattern of the Jeep, flight from officers and non-compliance with their lights and siren, his furtive movements within the car, refusal to follow commands, and his presentation of the firearm, it is the opinion of the District Attorney that the shooting of Moreno-Aguirre by SPD Officers Minick and DeJesus was legally justified and not a criminal act. The officers' reactions to Moreno-Aguirre's actions were warranted given the circumstances they faced at the time. Both officers reasonably believed that Moreno-Aguirre posed a serious threat to their safety and the safety of the surrounding public.

I. STATEMENT OF FACTS AND PHOTOGRAPHS¹

On Thursday, July 28, 2016, at about 10:41 a.m., the Sparks Police Department received a series of 911 calls regarding a possible drunk driver whose vehicle had collided with parked vehicles and property in the area of 4th St. and Greenbrae Drive and near Van Meter Park. One of the callers, Michael Carr, who had just turned eastbound from Pyramid Way onto Greenbrae Drive, reported that a red late 1990's Jeep Cherokee, operated by a thirty to forty year old Hispanic male, pulled out of a business on Greenbrae Drive and cut him off. The driver had a shaved head and a blank stare.

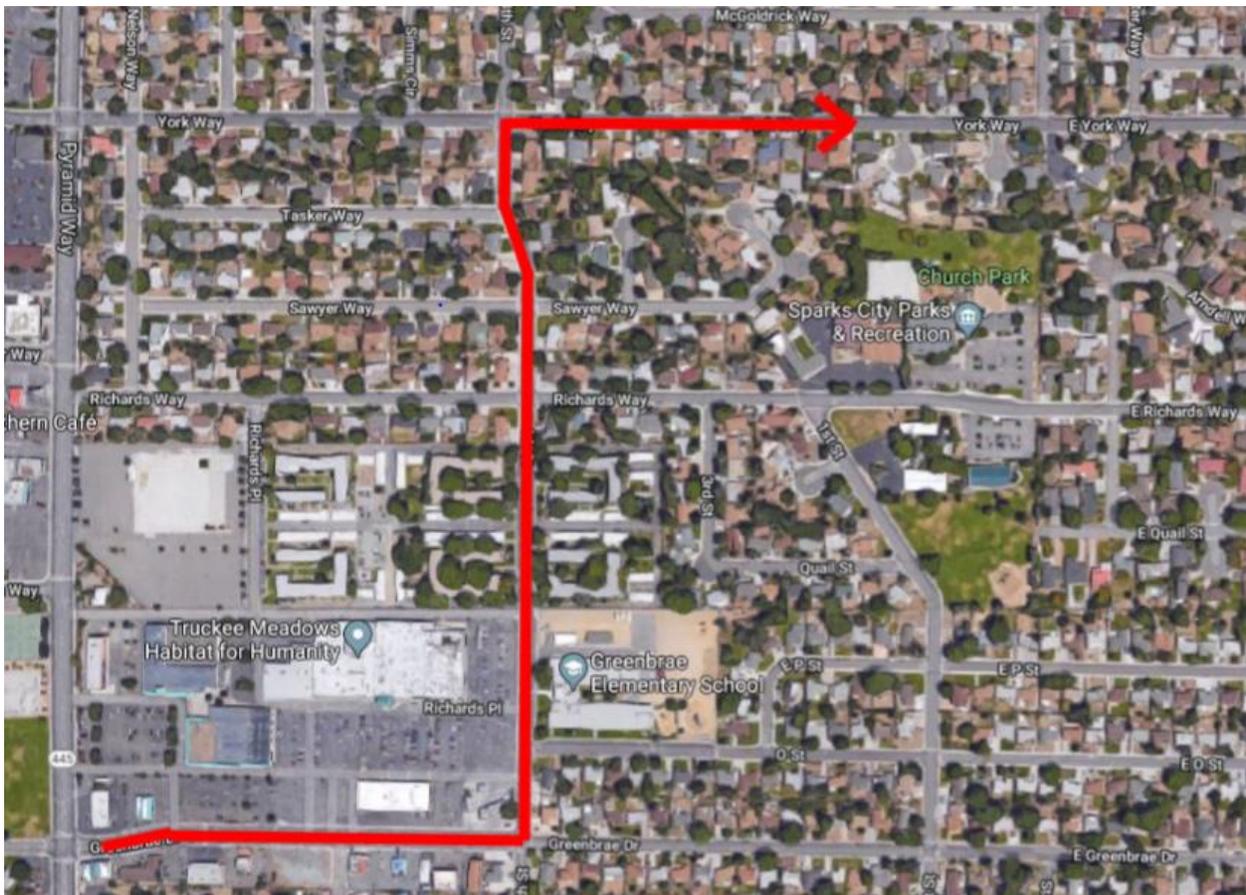
Mr. Carr followed the Jeep, which after a short burst of speed slowed to about fifteen miles per hour as it proceeded east toward the controlled intersection of Fourth Street and

¹ The Statement of Facts is synopsised from witness interviews, videos, and police reports.

Greenbrae. Short of the intersection the Jeep sideswiped a car parked on the right side of the road. The Jeep turned left and fled on Fourth Street at approximately 60 miles per hour. Mr. Carr followed, witnessing the Jeep sideswipe two more cars and drive into on-coming traffic, causing oncoming vehicles to pull over in order to avoid collisions.

The Jeep ran a stop sign when turning right onto York Way and struck another vehicle at that intersection. The Jeep continued east on York at a high rate of speed, estimated by Mr. Carr at seventy miles per hour. Due to the reckless driving pattern, Sparks Police Department dispatchers asked Mr. Carr to stop following the Jeep. Mr. Carr lost sight of the vehicle near Greenbrae Drive and McCarran Boulevard.

(The map below depicts the roadways and direction of travel witnessed by Mr. Carr)



Five minutes later Kimberly Courtney called Sparks Police. Mrs. Courtney was cleaning her car near Van Meter Park in Sparks when her attention was drawn to a maroon Jeep Grand Cherokee at the intersection of Fargo Way and Flora Glen. The Jeep had backed into a fence at the park and peeled out, southwest down Flora Glen. Mrs. Courtney walked to the intersection of Fargo and Flora Glen and saw the Jeep parked about five houses down, near 1267 Flora Glen. It would later be discovered that the driver of the Jeep lived at 1267 Flora Glen.

Mrs. Courtney then saw a male run from the house, enter the driver's side of the Jeep and accelerate away from her. Moments later Sparks Police Department Officers Minick and DeJesus arrived and she provided them the Jeep's last direction of travel.

Officer Minick was driving a marked Sparks Police Chevrolet Tahoe. Officer Dejesus was riding in the passenger seat. The officers were in full uniform and the vehicle was equipped with a "dashcam" video and audio recording system. The officers proceeded southwest on Flora Glen Drive. Near the end of the block, at Woodhaven Lane, they located a fluid trail and followed it southwest on O'Callahan Drive and then west on Greenbrae Drive toward McCarran Boulevard.

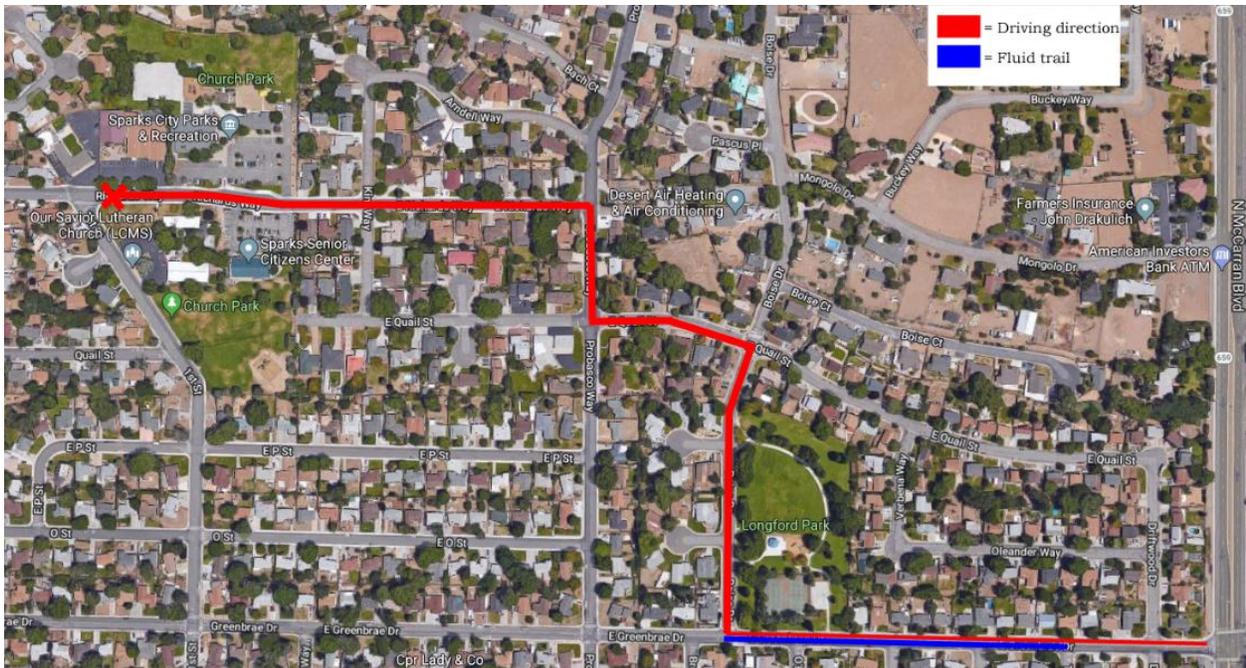
(The map below further depicts the travel of Moreno-Aguirre)



After crossing E. McCarran, the officers spotted the Jeep parked on Boise Drive at the northwest corner of Longford Park. Officer DeJesus saw a male outside of the vehicle looking at it, as if inspecting for damage. As Officer Minick approached Boise Drive the male entered the Jeep and fled at a high rate of speed. It turned left onto Quail Street, ran the stop sign as it turned right onto Probasco Way, and then turned left onto East Richards Way. On East Richards the driver failed to stop for the patrol vehicle's lights and siren, varied its speed, and swerved within the roadway. At one point the driver was bending down as if grabbing or hiding an item.

The Jeep eventually came to an abrupt stop at the intersection of First Street and East Richards Way. The Jeep did not pull over to the side of the road, but remained stopped in the travel lane at the intersection's stop line. To the right of the Jeep were two churches and a recreation center full of kids in a summer program. To the left and behind the Jeep was an open space, another church and a pedestrian, Steven Gant.

(The map below further depicts the travel of Moreno-Aguirre with the X marking the approximate location where he stopped the Jeep)



The side and rear windows of the Jeep were somewhat obscured by the vehicle's factory window tinting. However, the daylight from the clear front windshield and open driver's window provided a visible view of the actions inside the Jeep. The still photograph below, taken from the patrol vehicle's video, is an accurate depiction of the Jeep when stopped and shows a clear area between the driver's seat and the passenger seat.



As the Jeep is stopped, one of the driver's hands is seen moving between the front seats, appearing and disappearing from view. Shortly thereafter the driver's right hand raises between the front seats. The officers then see a long-barreled revolver in the driver's hand as his arm extends back and to the right, towards the right rear of the Jeep. The still photograph below captures the view from the patrol vehicle's "dashcam" video of the driver's hand and arm as it extends back with the gun, pointing in Officer DeJesus's direction.



After the driver's hand and the gun then disappear from view, the video captures the officers repeatedly exclaim, "He's got a gun." The officers exit their vehicle, commanding the driver to "stop it" and "show [his] hands" several times.² The driver ignores all commands and continues to repeatedly lean over to his right, as if reaching between or around the front passenger seat. The still photograph below shows the driver's head between the seats, providing an example of how the driver continued to ignore the officers' commands and move within the vehicle.



² The video also contains a command after the first order to "stop it." This other command is not clearly audible, but sounds consistent with "get out of the car."

At this point, the officers are out of their vehicle and positioned at forty five degree angles behind the left and right side of the Jeep. The driver's body is rotated to the right when he begins to lift an object into view. The next still photograph below shows this action as well as Officer Minick's gun in the far left of the photo.



The next photograph depicts Officer Minick's continued approach from the left and shows the driver raising a final object between the front seats.



Believing that the driver, who continued to disobey commands, had the revolver and was about to fire it at Officer DeJesus, Officer Minick fired six shots from his duty weapon.

Officer DeJesus, who last saw the gun dip below the window line of the Jeep when he exited the patrol vehicle, was behind and to the right of the passenger side of the Jeep. Officer DeJesus, having witnessed the driver disobey Officer Minick's orders and continue to move inside the vehicle, next heard gunfire. This caused him to believe he was in grave danger and he fired three shots into the Jeep as well.

Fellow officers arrived within thirty seconds. The now unconscious Moreno-Aguirre was removed from the vehicle, searched for weapons and provided with medical care. Officer Hults found a small caliber Beretta semi-automatic handgun, shown below, in the driver's left front pocket. He gave it to Officer Begbie who removed the magazine, rendering it safe. Officer Begbie noted that the magazine had live rounds in it but the chamber was empty.



Following the stabilization of the scene, the Reno Police Department took over the investigation. RPD Detective Scott Johnson obtained and executed a search warrant for the Jeep. On the back seat, as depicted below, he located a blue bag partially covering a bottle of Patron tequila. The bag contained several boxes of .357 caliber ammunition and the bottle of Patron tequila was partially consumed.



In the rear cargo area of the Jeep Detective Johnson located a fully loaded .357 caliber Ruger Blackhawk revolver on top of a large black plastic garbage bag. Photographs of the revolver's location in the vehicle and subsequent recovery are below.





The Jeep was later examined at the Washoe County Crime lab. The following photograph depicts the general trajectory of Officer Minick's shots.



Washoe County Medical Examiner Dr. Laura Knight performed the autopsy of Moreno-Aguirre. Dr. Knight determined that the cause of death was multiple gunshot wounds to the torso and the manner of death was homicide, i.e., death at the hands of another. Moreno-Aguirre's blood was collected at the autopsy and was sent to a lab for testing. The results indicate that Moreno-Aguirre's blood alcohol content was 0.196 mg/dL, more than twice the legal limit for driving.

A. Witness Accounts

1. Civilian Steven Gant

Steven Gant was walking eastbound on the south side of Richards Way just past the intersection with First Street when he heard sirens ahead. He looked to see the Jeep and patrol vehicle slow as they approached the stop sign to his left. Mr. Gant said the driver of the Jeep was reaching for something toward the center of the vehicle with his right arm, but Mr. Gant could not see what it was. Mr. Gant stated the driver was smirking, "like he thought it was a joke or something."



When the Jeep came to a complete stop Mr. Gant sensed that something was wrong and continued about thirty feet further down the sidewalk behind the two vehicles. Mr. Gant saw the police exited their vehicle, position themselves at 45 degree angles behind the Jeep. He heard the police command "get out of the car" and "put that down, put that down" before hearing both officers fire their weapons into the Jeep.

Mr. Gant did not see the driver with a gun, however, based upon the driver's actions and the police response, he thought the driver was reaching for a gun. Mr. Gant further opined that the officers did nothing wrong and that they did what anyone else would have done under the same circumstances.

2. Officer Shane Minick

Officer Minick has worked for the Sparks Police Department in varying capacities for approximately 20 years. On July 28, 2016, he was working as a Field Training Officer with trainee Officer DeJesus. Officer Minick had a full night's sleep and started his shift at 6:00 a.m. He and Officer DeJesus responded to various calls for service before hearing the call in this case regarding a traffic collision near Greenbrae Drive and Fourth Street. A citizen had called in a red Jeep fleeing the collision at a high rate of speed. It was last seen eastbound on York Way.

The officers went to look for the Jeep and were ultimately directed to Van Meter Park. Following a witness's direction they proceeded down Flora Glen Drive until they found a fluid trail at the intersection with Woodhaven Drive. Officer Minick followed the trail until they reached the area of Longford Park where he saw the Jeep at the north end of the park on Boise Drive. After turning onto Boise the Jeep fled and he gave chase. On Richards the Jeep was speeding, swerving and he could see the driver bending down in the car as if trying to retrieve or hide an item. In his experience, those movements may be associated with either retrieving a weapon or hiding contraband. Those actions made Officer Minick proceed with caution.

The Jeep came to a "somewhat abrupt" stop at the intersection with First Street,

"I see him turn and he turns into the center of the Jeep you know from the driver's seat just kinda turns into his right and the next thing I know is I see a gun come up um... see it and it's pointed back at us so I yell to my trainee, I said uh... "Gun, gun, gun," and he gets on the radio and he yells something, "He's got a gun, he's got a gun," something like that. So I bail out the driver's side, [officer DeJesus] bails out the passenger side. Um... I still see that he's got... he's turned back. Um... if I remember right I yelled at him you know, "Drop the gun, drop the gun, get your hands

up," um... and it was pretty quick um... and he was still pointed. Um... and I... I wasn't able to see you know if he was tracking DeJesus or not because of the rear pillar of the car and then the you know the positioning of the seat um... but I knew he still had... had the gun um... so I thought man he's gonna end up trying to kill one of us so I started shooting um... and I was sh... and I shot uh... just up in front of my driver's door and as I'm shooting I'm walking towards um... I'm moving towards his vehicle um... and I remember shooting cause I remember I thought you know I'm gonna shoot through the... through the seat um... to try to you know stop him from trying to hurt or kill one of us."

Officer Minick stated that the gun looked like "a big 'ol revolver". When Officer Minick exited his vehicle, the driver kept his torso twisted toward the center of the Jeep while moving in the Jeep and refusing to obey his commands. These facts led Officer Minnick, who last saw the revolver pointed at Officer DeJesus, to believe that the driver still had the revolver pointed at Officer and that Officer DeJesus was about to be shot. Therefore, Officer Minnick fired his duty weapon into the Jeep at the driver.

3. Officer Eric DeJesus

Officer DeJesus had been with the Sparks Police Department for about three months as of the shooting. He was in the second phase of his Field Training program. Prior to that he worked for the Washoe County Sheriff's Office for about a year. Officer DeJesus was riding the passenger seat when the call came out in this case. The two officers talked to witnesses at Van Meter Park and proceeded to find and follow the fluid trail previously described.

They located a similar vehicle at Longford Park with a male outside of the Jeep looking inspecting it. The man looked up towards the police, entered the Jeep, fled, did not stop for lights and sirens and drove erratically until the intersection of Richards Way and First Street. Instead of pulling to the side of the road, the Jeep stopped in the middle of the travel lane. The Jeep had tinted windows, however, the interior of the vehicle, though shaded, was visible due to back-lighting from the clear front windshield.

Officer DeJesus saw the driver

"...turned around and what seemed to be a revolver type weapon, I remember the barrel being a very noticeable length. I don't... I can't really describe how long it is, I just remember that I noticed it to be a revolver with a very noticeable um... length barrel. The driver kinda turned over like this and pointed the gun and then I remember Officer Minick yell you know, "Oh shit he has a gun, he has a gun," and I... as I was watching the barrel kinda come towards me I just remember ducking and throwing off my seatbelt and getting out of the car. Um... I drew my weapon. I believe Officer Minick was saying something along the lines of like, "Let me see your hands, let me see your hands," but as I saw that gun kinda aim towards me, it went below the window tint of the vehicle, but I believe it was still pointed at the direction of me and then that's when the shots were fired.

Upon first seeing the revolver "come around towards him", Officer DeJesus was in fear for his life, thinking, "oh my God like this is actually happening to me, and I remember I kinda like went down in my seat and I flung my seatbelt off and I open the door really quick and drew my weapon." Officer DeJesus stated that the driver was "torqued around" and pointing the revolver right at him. Officer DeJesus said he "wanted to get out of that vehicle as fast as possible cause I just remember thinking and hearing gun and I just... I didn't wanna be trapped in that passenger seat because I felt like where I was, was directly in his site."

The gun, and later the driver, dipped below back-lighting of the front windshield. The driver was moving inside the vehicle and not obeying orders. Upon hearing a shot ring out, Officer DeJesus, feared that he was being shot at or that Officer Minick fired because the driver was about to shoot him, DeJesus fired several shots into the Jeep. Officer DeJesus then used his radio to call for assistance.

B. Analysis of Patrol Vehicle Video

The patrol vehicle video has been analyzed at speeds ranging from ¼ speed to real time. The video corroborates the officers' statements. Moreno-Aguirre is found at Longford Park and subsequently there is a minute long pursuit from that location to

the intersection at East Richards Way and First Street. Before coming to a stop Moreno-Aguirre's right hand moves between the front seats, as if from the back of the car toward the front. Right before the Jeep comes to a complete stop, Moreno-Aguirre is next seen raising an object resembling a long barreled handgun in his right hand, and extending his arm with the handgun back and to the right, as if pointing the handgun toward the right rear of the Jeep.

As Moreno-Aguirre's arm and the gun finish moving toward the rear of the vehicle each appear to jerk rapidly. It is difficult to see what exactly happens with the weapon due to the position of Moreno's hand as relative to the front passenger seat's headrest. However, upon very slow replay, and careful review, it appears as if he either loses control of the gun or tosses it to the rear of the Jeep.

Next, both officers are heard repeatedly exclaiming, "He's got a gun." While they exit their vehicle Moreno-Aguirre continues to move within the vehicle. His head moves in and out of the camera's view as he repeatedly bends over the center console toward the passenger seat. Officers are then heard yelling "stop it" and "show your hands". Moreno then raises a hand in and out of view between the front seats. An officer again yells "show your hands". At this time, Officer Minick is seen approaching from the left rear of the Jeep and about a forty-five degree angle.

Moreno-Aguirre then raises a hand holding an object between the front seats, shots ring out, the rear glass window shatters and Moreno-Aguirre slumps back into the driver's seat with his head toward the center console. When fully raised the object raised is large and appears similar to a plastic bag or shirt. Several plastic bags and shirts are later found in both the front and rear passenger seat areas of the Jeep. The time span from the weapon appearing into view and the shooting is approximately eight seconds.

C. Background Investigation Regarding Moreno-Aguirre

Moreno-Aguirre, age 41, lived at 1267 Flora Glen Drive in Sparks, Nevada, with sister and their ailing mother. He worked as a busser at the Olive Garden restaurant on Lincoln Way in Sparks. The morning of July 28, 2018, he reported for his scheduled

shift. At about 9:30am bartender Tyler Wood saw Moreno-Aguirre behind the bar with a bottle of Patron tequila in one hand and a disposable paper cone-shaped employee drinking cup in the other. The cup was about one-quarter full of a clear liquid. Wood confronted Aguirre-Moreno, stating, "You know you could get fired for that."

Moreno-Aguirre wanted to pour the liquid back into the bottle. Mr. Wood stopped him from doing so, telling him to throw it away. Moreno-Aguirre was downcast, mumbled something about his mother and having a rough day. He left the bar area, placed his head against the wall and buried his face in his arms. Mr. Wood did not smell alcohol on Moreno-Aguirre's breath at that time.

Fellow employee Kathy Ducey saw the exchange between Mr. Wood and Moreno-Aguirre and later spoke with Moreno-Aguirre. He told her he was upset because a woman had recently died out front of his home which caused his mother to believe that she was going to die soon.

Restaurant Manager Remy Chonez learned of the incident behind the bar and requested another employee to translate his questioning of Moreno-Aguirre. Moreno-Aguirre said he did not drink the shot of alcohol, but threw it away.³ Mr. Chonez described Moreno-Aguirre as overcome with emotion regarding his ailing mother, his own medical issues and his housing situation. Moreno-Aguirre, who was sent home for the day, declined to fill out a written statement concerning the matter and left in tears at about 10:15am. Mr. Chonez also did not note any signs of intoxication about Moreno-Aguirre.

Jorge Moreno-Aguirre's sister, Aurosia Aguilar, was interviewed a few hours after the shooting. Ms. Aguilar said that the day of the shooting Moreno-Aguirre left for work at about 8:00am and returned between 11:00 and 11:30. At that time Moreno-Aguirre told her he had forgotten a shirt and went to his room. Ms. Aguilar, who was cleaning the house, didn't think anything of it. Shortly after he entered the house, Ms. Aguilar heard a vehicle start and assumed it was her brother leaving.

³ According to the interpreter, Jacinto Alvarez, Moreno-Aguirre denied taking the alcohol and believed that he was going to be fired.

II. LEGAL PRINCIPLES

Homicide is the killing of another human being, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of justifiable or excusable homicide which are lawful. The Washoe County Medical Examiner's Office has deemed the death of Moreno-Aguirre a homicide. Consequently, the Washoe County District Attorney's Office is tasked with assessing the conduct of the officers involved and determining whether any criminality on their part existed at the time of the shooting, i.e., whether the killing was lawful.

In Nevada, there are a variety of statutes that define justifiable homicide. (see NRS 200.120, 200.140, and 200.160) There is also a statute that defines excusable homicide and one that provides for the use of deadly force to effect arrest. (see NRS 200.180 and NRS 171.1455) Moreover, there is case law authority interpreting justifiable self-defense and defense of others. All of the aforementioned authority is intertwined and requires further in depth explanation:

A. The Use of Deadly Force in Self-Defense or Defense of Another

NRS 200.120 provides in relevant part that "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of... person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony..." against the other person. NRS 200.160 further provides in relevant part that "Homicide is also justifiable when committed... in the lawful defense of the slayer... or any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished".

The Nevada Supreme Court refined the analysis of self-defense and, by implication defense of others, in Runion v. State, 116 Nev. 1041 (2000). In Runion, the Court set forth sample legal instructions for consideration in reviewing self-defense cases as follows:

The killing of another person in self-defense is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill him or cause him great bodily injury; and

2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

Actual danger is not necessary to justify a killing in self-defense. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he is about to be killed or suffer great bodily injury; and

2. He acts solely upon these appearances and his fear and actual beliefs; and

3. A reasonable person in a similar situation would believe himself to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

Id. 1051-52.

B. Justifiable Homicide by Public Officer

NRS 200.140 provides in relevant part that "Homicide is justifiable when committed by a public officer... when necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty" and "When necessary... in attempting, by lawful ways or means, to apprehend or arrest a person" and/or "in protecting against an imminent threat to the life of a person".⁴

C. Use of Deadly Force to Effect Arrest

NRS 171.1455 provides in relevant part "If necessary to prevent escape, an officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person... Poses a threat of serious bodily harm to the officer or to others.

III. ANALYSIS

Officer Minick, knowing about Moreno-Aguirre's erratic and dangerous driving, having seen the gun last pointed in his partner's direction, seeing Moreno-Aguirre's continued movements and refusal to follow the simplest commands, had actual and reasonable grounds to believe that Moreno-Aguirre was about to shoot Officer DeJesus and that it was necessary under the circumstances to use deadly force to defend Officer DeJesus from Moreno-Aguirre.

Officer DeJesus, knowing about Moreno-Aguirre's erratic and dangerous driving, having seen the gun last pointed at him, seeing Moreno-Aguirre's continued movements and refusal to follow the simplest commands, and then immediately hearing a shot ring out, had an actual and reasonable grounds to believe that Moreno-Aguirre was shooting at him or that Officer Minick saw something that indicated Moreno-Aguirre was about to shoot him and that it was necessary under the circumstances to use deadly force to defend himself.

The facts of the case do show that the officers were mistaken about Moreno-Aguirre's immediate ability to shoot at Officer DeJesus because the revolver was ultimately located into the back

⁴ A 1985 Nevada Attorney General Opinion limited the interpretation of NRS 200.140 to situations where the officer has probable cause to believe that the suspect poses a threat of serious physical harm either to the officer or to others.

of the Jeep. However, as stated in Runion, supra, actual danger is not necessary to justify a killing in self-defense, and a person has a right to defend from apparent danger to the same extent as he would from actual danger if: (1) the person killing is confronted by danger which arouses in his mind an honest belief and fear that he is about to be killed or suffer great bodily injury; (2) he acts solely upon these appearances and his fear and actual beliefs; and (3) a reasonable person in a similar situation would believe himself to be in like danger. These principals equally apply to the defense of others. Thus, a killing may be "justified even if it develops afterward that the person killing was mistaken about the extent of the danger."

Officers Minick and DeJesus, who were out of the car at the time of the shooting, did not have the same vantage point of the video camera or the luxury of replaying the video at $\frac{1}{4}$ speed in order to help them ascertain whether Moreno-Aguirre had tossed the revolver and/or whether he was raising a weapon or another item at that time of the shooting. The evidence shows that they clearly believed Moreno-Aguirre still had the revolver in his hand when they fired shots.

Officers Minick and DeJesus were confronted with, and honestly believed, the appearance of imminent and deadly danger was presented by Moreno-Aguirre's actions. There is no evidence that they acted upon any other appearances, fears or beliefs when firing their weapons. A reasonable person in a similar situation would believe himself to be in like danger. Therefore, the killing in this case is justifiable even though it developed afterward that the officers were mistaken about the extent of the danger.

IV. CONCLUSION

After reviewing the applicable law and all of the evidence, witness statements and reports submitted in this matter for review, the Washoe County District Attorney agrees with the Reno Police Department that criminal charges are not warranted. It is the opinion of this office that the July 28, 2016, shooting death of Moreno-Aguirre by Officer Minick and Officer DeJesus was done so in justified self-defense and defense of others. Absent new and compelling evidence to the contrary, the Washoe County District Attorney's Office considers this matter closed.